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INFO RUEHBO/AMEMBASSY BOGOTA 4389
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RUEHLP/AMEMBASSY LA PAZ FEB SANTIAGO 1128
RUEHCV/AMEMBASSY CARACAS 0190
RUEHB/AMEMBASSY BUENOS AIRES 2799
RUEHME/AMEMBASSY MEXICO 3472
RUEHBR/AMEMBASSY BRASILIA 7227
RUEHSO/AMCONSUL SAO PAULO 1711
RUCPDOC/DEPT OF COMMERCE WASHINGTON DC
RUEAWJA/DEPT OF JUSTICE WASHINGTON DC
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC

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COMMERCE FOR 4331/MAC/WH/MCAMERON, ITA/MAC/OIPR/CPETERS
COMMERCE PASS USPTO
SAO PAULO FOR DMAZURKEVICH

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TAGS: KIPR ECON ETRD USTR PE

SUBJECT: IPR IN PERU: SPECIAL 301 REVIEW

REF: A. STATE 7944

1B. 06 LIMA 2529

1C. 06 LIMA 1718

Summary

11. Post concurs with industry recommendations that Peru remain on USTR's Special 301 Watch List for 2007. Peru saw improvements in IPR protection that resulted in a slightly higher market share for certain copyrighted and patented products. The GOP's IP agency used preliminary injunctions to halt the sale of suspected illegal copies of pharmaceuticals, clothing and other items pending final rulings. In December 2006 and January 2007, the GOP for the first time assigned IPR duties to several national courts of first instance and one appeals court, and increased the number of prosecutorial offices with IP responsibilities. Due care should be taken in the public announcement of Peru's standing in the Special 301 review to acknowledge these positive developments.

12. Still, Peru continues to face high levels of patent, copyright and trademark infringements in all sectors, including media, toys, and apparel. Challenges include strengthening enforcement and border controls, combating public acceptance of pirated and counterfeit goods, enacting deterrent sentences, and further reducing government use of unlicensed software. The USG and GOP signed the U.S.-Peru Trade Promotion Agreement (PTPA) in April 2006, and the Peruvian Congress passed the agreement in June 2006. If passed by the U.S. Congress and properly implemented, the PTPA will help improve the protection of IP in Peru. End Summary.

Laws and Regulations: PTPA Would Help

13. Peru's IP laws are generally adequate and TRIPS compliant. The pending U.S.-Peru Trade Promotion Agreement (PTPA) would correct shortcomings and increase some protections beyond TRIPS requirements. For example, the PTPA includes provisions that enhance trademark protections, provide copyright protection related to the Internet, mandate government use of legal software, protect confidential pharmaceutical and agrochemical test data and trade

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secrets, and increase penalties for IP violations.

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Overall Infringement Levels: Very High

¶4. According to the International Intellectual Property Alliance's (IIPA) 2006 estimates, 98% of sound recordings (same level as in 2005) and 70% of business software (down from 73% in 2005) in Peru were pirated, representing a loss of \$80.5 million (down from \$109 million in 2005). According to the Business Software Alliance, Peru is in the middle of the pack among Latin American countries in terms of software piracy. The audiovisual industry estimates a 75% piracy rate, which was a major factor in the closure of all of Blockbuster's stores in Peru. The Pharmaceutical Research and Manufacturers of America (PhRMA) estimates that patent and data protection damages totaled 23.2% of sales in Peru. Pirated CDs and DVDs, illegal copies of books, and counterfeit clothing and toys can be found throughout the country. Some markets are known for selling illegal goods, which can also be bought on many of Lima's street corners.

GOP Efforts and...

¶5. The GOP has made some effort to combat IP violations, and has committed itself to further improvements by approving the PTPA. In May 2006, the GOP issued Supreme Decree 009-2006-PRODUCE, declaring the fight against IPR violations to be of national interest and bolstering the activities of relevant agencies. Indecopi's (the GOP's IP administrative agency) trademark, patent and copyright offices do good work with limited staff and funding. The patent, trademark, and copyright registration processes have been burdensome, especially for small businesses. Indecopi has made significant headway in reducing the time it takes for these registrations, which should help improve the IP climate. Indecopi officials and public ministry prosecutors have ex officio powers, allowing them to conduct investigations and seizures, and file charges, without an industry complaint.

...Public Indifference

¶6. In a national survey on corruption and crime conducted in September 2006, only 17% of Peruvians objected to the purchase of pirated products, making IPR violations the most tolerated crime in the survey by far. Other crimes included in the survey included nepotism, not paying transportation fares, bribing police to avoid a ticket, not requesting a receipt to avoid the VAT, and giving a gift or money to accelerate judicial or municipal transactions. Changing the public's perception is perhaps one of the more difficult challenges facing those who want to improve IPR protection in Peru.

¶7. April 23-27 was "Intellectual Property Week" in Peru (Ref C), celebrated with book giveaways and massive destructions of seized products. Indecopi commemorated its second annual Destruction Day, destroying more than 300,000 confiscated pirated CDs and DVDs, and educating the public about how IPR violations hurt the overall well-being of Peruvians. Indecopi also highlighted the need to protect copyrighted printed material and held a two-day seminar for local government officials, bringing in speakers from the audiovisual, music and book industries to explain how IPR violations directly affect Peruvians. The Peruvian Book Association sponsored special sales on books on April 22 in more than 50 locations throughout Peru in an effort to promote the sale of legitimate books.

...Patents: U.S. Pharmaceuticals Winning

¶8. U.S. pharmaceutical companies said they began to note a positive shift of the burden of proof from the patent holder to the accused copier in Indecopi's proceedings. Indecopi often issued preliminary injunctions against presumably illegal copies. U.S. pharmaceutical companies also won several important patent infringement court cases in 2006 (see Ref B for an example). Confidential test data submitted for the marketing approval of pharmaceutical and

agrochemical products remains unprotected, though the PTPA should resolve this once implemented.

...Trademarks: Fines Increasing

¶9. Indecopi's Trademark Office opened 477 infringement cases in 2006 (67 of them ex officio), and conducted 423 inspections (30 of them outside of Lima). During the year, the Trademarks Office found that 224 charges were founded, issuing 174 fines (totaling almost \$500,000) and 44 cautions. The fines issued by the Trademark Office in the three previous years totaled \$314,000 (2005), \$158,000 (2004), and \$124,000 (2003). Most of the Trademark Office cases involve clothing and branded items from companies like Disney, Marvel, and Warner Brothers.

...Copyrights: Ubiquitous Optical Discs

¶10. Indecopi continued its "Anti-Piracy Crusade," which began in 2002. In July, the Anti-Piracy Crusade presented an advanced screening of "Superman Returns" in an effort to increase public awareness about IPR. Indecopi's Copyrights Office conducted 51 inspections of businesses alleged to use illegal software in 2006, presenting 28 formal cases, and issuing 22 fines. In all, the Copyrights Office conducted 270 inspections in 2006, 155 of which involved music CDs.

Government Software: Some Improvements

¶11. In 2003, the GOP passed a decree mandating that all government agencies use legally procured software by March 31, 2005. This deadline was extended to December 31, 2006, and, regrettably, again to July 31, 2008. The E-Government Office in the Prime Minister's Office has the lead in implementing this project. Enrique Saldivar, the new Director of the E-Government Office, told us that the percentage of central government computers carrying pirated software had decreased from over 73% in 2005 to 41% in the last quarter of 2006. Implementing the measure within the police and military has been particularly difficult because of the decentralized nature of their IT offices. Cleaning up government computers, especially in law enforcement, would provide a positive example to the public. The GOP is making an effort to meet its targets before the new deadline, and committed to resolve this problem in the PTPA.

Law Enforcement: More Raids and Seizures Needed

¶12. In 2006, Indecopi led 65 operations resulting in \$2.5 million worth of seizures of clothing, accessories, CDs, DVDs, toys, etc. The Peruvian National Police's (PNP) Department of IPR Investigations conducted 64 raids from January-August 2006, detaining 1,175 people and seizing over \$6 million of pirated or counterfeit items. From January-May 2006, the Peruvian National Police's elite "Green Squad" seized 1,955 bags of pirated CDs, DVDs and VHS tapes; compared with only 318 bags in all of 2005. Peru's Customs office also sporadically seized counterfeit goods entering Peru's land borders from Chile, Bolivia and Ecuador, as well as the primary seaport of Callao. The Customs Special Operations unit gave excellent cooperation in interdicting a container of pirated Nike products, advancing the information to Chilean Customs, who seized the goods and began to work with U.S. law enforcement to dispose of the goods and track down the shipper. Given the magnitude of the IP problems in Peru, additional law enforcement resources should be used in a concerted campaign.

Judicial Process: Few Convictions, New Courts Give Hope

¶13. Despite the numerous raids and seizures over the years, the number of penal convictions and deterrent sentences are close to zero. According to an IP prosecutor, there are over 1,000 IP-related cases pending judicial action. For years, industry, Indecopi and post had been emphasizing the need for specialized IP courts, so that judges could develop an IP knowledge base.

¶14. The January 2007 implementation of the late 2006 decisions to

assign IP responsibilities to specific courts and to increase the number of IP prosecutors should finally help to improve this lack of judicial enforcement. These reforms assigned IP duties to four national penal courts of first instance (with one judge and one assistant each) and a national penal appeals court (with 16 judges, including a president of the court). The appeals court used to be focused on terrorism and corruption cases, and is respected for its independence and competency.

¶15. Before January 2007, Peru had two prosecutors' offices dedicated to IP, with three prosecutors in each office. There are now three prosecutors' offices (with three prosecutors each) in the city of Lima, plus two district prosecutors' offices (in Lima Norte and in Callao, which includes Peru's main seaport and airport), with IP responsibilities. These offices were given additional preventive and investigative duties.

¶16. In addition to the regular training Indecopi and Customs provide law enforcement officials, these entities have developed extensive training for the new judges and prosecutors. Given the importance that these judicial officials are able to do their jobs well, post plans on organizing a judicial IPR enforcement seminar in the latter part of 2007. Indecopi and the American Chamber of Commerce in Peru have already indicated a willingness to collaborate. Thanks to USPTO, post has already been able to send the president of the new IP appeals court and one of the new lead prosecutors to enforcement training in Alexandria.

Treaties: Peru Signed Nearly All of Them

¶17. Peru is a member of the World Intellectual Property Organization (WIPO). It is also a member of the Paris Convention, Berne Convention, Rome Convention, Geneva Phonograms Convention, Brussels Satellites Convention, Universal Copyright Convention, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Peru joined the WCT in July 2001 and the WPPT in February 2002. The U.S. does not have a bilateral investment treaty with Peru, but the pending U.S.-Peru Trade Promotion Agreement (PTPA) contains a state-of-the-art IPR chapter.

Other Post Efforts: Toolkit, AmCham, Training

¶18. Post launched a comprehensive IPR Toolkit, available on FCS' website (<http://www.buyusa.gov/peru/en/389.doc>). Post welcomed the assignment of a Department of Commerce regional IP attache' to Sao Paulo in 2006, and he has already visited Peru. Post again helped to organize AmCham's successful annual IPR conference, which had 203 attendees plus two industry-specific workshops in 2006. Post participates in AmCham Peru's very active IP Committee, which meets regularly. The Committee established three subcommittees in 2007 -- enforcement, FTA implementation, and making IPR protection a state priority -- to further bolster IPR efforts. Post sent at least 14 Peruvians to USPTO and USDOJ IPR training courses in 2006. Post met with numerous U.S. companies throughout the year on IP issues, and has successfully advocated on their behalf when appropriate.

Comment: Recommend No Change in Status

¶19. Post recommends that Peru remain on USTR's Special 301 Watch List due to the continued high levels of copyright and trademark infringements, the lack of protection for confidential test data submitted for the marketing approval of pharmaceutical and agrochemical products, and the need for increased enforcement efforts, particularly the application of strong penalties for IPR violators necessary for deterrence. Post applauds the efforts of Indecopi and the designation of new IP-focused courts and prosecutors, which, together with implementation of the PTPA, will lead to improvements in Peru's IP environment. Post requests that the public announcement of Peru's standing in the Special 301 review acknowledge the country's positive achievements.

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